

BEN W. "Bud" CHILDERS  
County Attorney

COUNTY ATTORNEY  
Fort Bend County, Texas

RECEIVED

MAR 26 1998

Opinion Committee

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March 23, 1998

Dan Morales  
Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-40171-98  
I.D. # 40171

Two members of the Rosenberg City Council of the City of Rosenberg, Texas have asked the Fort Bend County Attorney to request an Attorney General's opinion.

The City Council has approved the construction of a new civic center-convention center despite the reservations and concerns of the two council members. Their concerns are as follows:

1. Can the City of Rosenberg use bond proceeds approved by voters for improvements to the existing Rosenberg Civic Center for the construction of a new Civic Center-Convention Center?
2. Does the contract as attached with Bass Construction Company violate the competitive bidding requirements of Section 252 of the Local Government Code?
3. Does the contract violate the Checks and Balances in a Contract for Construction outlined by Attorney General Opinion No. JM 1189 and is this illegal as a design/build contract?

A law firm has given an opinion on the first question. Please see attached March 2, 1998 letter from Vinson & Elkins attorney, Frank McCreary as Exhibit "A" and Rosenberg City Ordinance 93-09 Proposition 3 as Exhibit "B".

The "Standard Form of Agreement between Owner and Construction Manager" attached as Exhibit "C" was addressed in the City Attorney's opinion. The City Attorney Firmin Hickey, in his March 5, 1998 memo opined the Construction Manager Contract was exempt from the competitive bid pursuant to Section 252.022(4) as a personal or professional service. The City Attorney's memo is attached as Exhibit "D".

The Council members ask question number 3 because of Attorney General Opinion No. JM 1186 (1990.) The Construction Manager Contract states in Article 2, § 2.1 as follows:

Architect/Engineering to be hired and paid by the Construction Manager . . .

Article 2, § 2.1.5.1 recognizes that there will be "bidding and awarding of Trade Contracts."

Article 7, § 7.2.2 lists "employees" of the Construction Manager and their pay.

The above referenced sections of Article 2 and 7 of the Construction Manager, in my opinion, are relevant to answering the second and third questions.

We request that the Attorney General's opinion be expedited.

Very truly yours,

A handwritten signature in cursive script, reading "Portia Poindexter", is written over a horizontal line.

Portia Poindexter, First Assistant

# Vinson & Elkins

ATTORNEYS AT LAW

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March 2, 1998

**BY FAX 281/344-0085**

Mr. Jeff Braun  
City Manager  
City of Rosenberg  
Post Office Box 32  
Rosenberg, Texas 77471-0032

RE: Civic Center Improvement Bonds

Dear Jeff:

This letter will confirm our telephone conversation regarding the use of the proceeds of \$300,000 bonds of the City sold in 1996 for civic center improvements. The bonds in question were authorized by the voters at the City's bond election on August 14, 1993, and were sold as part of the City's \$2,000,000 General Obligation Bonds, Series 1996 on June 18, 1996. It is my understanding that at the time of the election in 1993 and at the time of the bond sale in 1996, it was the City's intention to use the bond proceeds for construction of improvements to the City's existing civic center, but subsequent to the bond sale, the City Council determined that it is not practical to improve the existing civic center and the City should construct a new civic center instead. The question you have asked is whether the \$300,000 in bond proceeds may be used to pay a portion of the cost of the new civic center.

The general rule in Texas is that a bond election creates a contract between the City and its voters and that the bonds must be issued and the proceeds used for the purpose for which they were voted. The proposition submitted to the voters in 1993 authorized \$300,000 in bonds "for the purpose of the construction of improvements to the City's civic center". The ordinance authorizing the issuance of the bonds in 1996 stated that they were issued for that same purpose. After issuing the bonds, however, the City Council received estimates from its architects regarding the cost of improving the existing civic center and a recommendation from a citizens advisory committee appointed to review the matter, and on November 5, 1996, unanimously approved the idea of constructing a new civic center rather than attempting to repair the old one.

ORDINANCE NO. 93-09  
ORDINANCE CALLING BOND ELECTION

THE STATE OF TEXAS   §  
COUNTY OF FORT BEND §  
CITY OF ROSENBERG   §

WHEREAS, the City Council of the City of Rosenberg, Texas (the "City") deems it advisable to hold an election for the purposes hereinafter stated; and

WHEREAS, the City Council wishes to proceed with the ordering of such election;

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS:

Section 1. An election shall be held in the City on the 14th day of August, 1993, which is not less than fifteen (15) days nor more than ninety (90) days from the date hereof, in which all resident, qualified electors of the City shall be entitled to vote, and the City Council hereby finds that holding the election on such date is in the public interest. The polls shall be open for voting at such election from 7:00 a.m. to 7:00 p.m. The entire City shall constitute one election precinct for such election. Voting for such election shall be conducted at the following polling place.

Polling Place:

Rosenberg City Hall  
2110 Fourth Street  
Rosenberg, TX 77471

Section 2. At the election the following PROPOSITIONS shall be submitted in accordance with law:

PROPOSITION NO. ONE

SHALL THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, BE AUTHORIZED TO ISSUE AND SELL AT ANY PRICE OR PRICES THE BONDS OF THE CITY IN THE AMOUNT OF \$2,500,000, MATURING SERIALLY OR OTHERWISE WITHIN 40 YEARS FROM THEIR DATE OR DATES, AND BEARING INTEREST AT SUCH RATE OR RATES, NOT TO EXCEED THE MAXIMUM INTEREST RATE NOW OR HEREAFTER AUTHORIZED BY LAW, AS SHALL BE DETERMINED

WITHIN THE DISCRETION OF THE CITY COUNCIL AT THE TIME OF ISSUANCE, FOR THE PURPOSE OF THE CONSTRUCTION AND EQUIPMENT OF A PUBLIC SAFETY BUILDING AND TO LEVY TAXES UPON ALL TAXABLE PROPERTY WITHIN THE CITY ANNUALLY SUFFICIENT TO PAY THE INTEREST ON THE BONDS AS IT ACCRUES AND TO CREATE A SINKING FUND TO PAY THE PRINCIPAL OF THE BONDS AS IT MATURES?

PROPOSITION NO. TWO

SHALL THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, BE AUTHORIZED TO ISSUE AND SELL AT ANY PRICE OR PRICES THE BONDS OF THE CITY IN THE AMOUNT OF \$1,400,000, MATURING SERIALY OR OTHERWISE WITHIN 40 YEARS FROM THEIR DATE OR DATES, AND BEARING INTEREST AT SUCH RATE OR RATES, NOT TO EXCEED THE MAXIMUM INTEREST RATE NOW OR HEREAFTER AUTHORIZED BY LAW, AS SHALL BE DETERMINED WITHIN THE DISCRETION OF THE CITY COUNCIL AT THE TIME OF ISSUANCE, FOR THE PURPOSE OF THE CONSTRUCTION OF DRAINAGE IMPROVEMENTS FOR THE CITY, INCLUDING ORIGINAL ROSENBERG TOWNSITE STORM SEWER IMPROVEMENTS AND SEABOURNE/DRY CREEK DETENTION FACILITIES, AND TO LEVY TAXES UPON ALL TAXABLE PROPERTY WITHIN THE CITY ANNUALLY SUFFICIENT TO PAY THE INTEREST ON THE BONDS AS IT ACCRUES AND TO CREATE A SINKING FUND TO PAY THE PRINCIPAL OF THE BONDS AS IT MATURES?

PROPOSITION NO. THREE

SHALL THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, BE AUTHORIZED TO ISSUE AND SELL AT ANY PRICE OR PRICES THE BONDS OF THE CITY IN THE AMOUNT OF \$300,000, MATURING SERIALY OR OTHERWISE WITHIN 40 YEARS FROM THEIR DATE OR DATES, AND BEARING INTEREST AT SUCH RATE OR RATES, NOT TO EXCEED THE MAXIMUM INTEREST RATE NOW OR HEREAFTER AUTHORIZED BY LAW, AS SHALL BE DETERMINED WITHIN THE DISCRETION OF THE CITY COUNCIL AT THE TIME OF ISSUANCE, ~~FOR THE PURPOSE OF THE CONSTRUCTION OF IMPROVEMENTS TO THE CITY'S CIVIC CENTER AND TO LEVY TAXES UPON ALL TAXABLE PROPERTY WITHIN THE CITY ANNUALLY SUFFICIENT TO PAY THE INTEREST ON THE BONDS AS IT ACCRUES AND TO CREATE A SINKING FUND TO PAY THE PRINCIPAL OF THE BONDS AS IT MATURES?~~

PROPOSITION NO. FOUR

SHALL THE CITY COUNCIL OF THE CITY OF ROSENBERG, TEXAS, BE AUTHORIZED TO ISSUE AND SELL AT ANY PRICE OR PRICES THE BONDS OF THE CITY IN THE AMOUNT OF \$2,300,000, MATURING SERIALY OR OTHERWISE WITHIN 40 YEARS FROM THEIR DATE OR DATES, AND BEARING INTEREST AT SUCH RATE OR

RATES, NOT TO EXCEED THE MAXIMUM INTEREST RATE NOW OR  
HEREAFTER AUTHORIZED BY LAW, AS SHALL BE DETERMINED  
WITHIN THE DISCRETION OF THE CITY COUNCIL AT THE TIME OF  
ISSUANCE, FOR THE PURPOSE OF THE CONSTRUCTION OF STREET  
IMPROVEMENTS FOR THE CITY, INCLUDING REBUILDING FOURTH  
STREET-PHASE I, HOUSTON STREET OVERPASS-PHASE I, FRONTAGE  
ROAD, U.S. 59 SOUTH SIDE, AND MONS/LOUISE INTERCONNECT,  
AND TO LEVY TAXES UPON ALL TAXABLE PROPERTY WITHIN THE  
CITY ANNUALLY SUFFICIENT TO PAY THE INTEREST ON THE BONDS  
AS IT ACCRUES AND TO CREATE A SINKING FUND TO PAY THE  
PRINCIPAL OF THE BONDS AS IT MATURES?

Section 3. Paper ballots shall be used for said election, and  
the ballots shall be prepared in accordance with the Texas Election  
Code so as to permit the electors to vote "FOR" or "AGAINST" the  
aforesaid PROPOSITIONS which shall be set forth on such ballots in  
English and in Spanish substantially the following form:

OFFICIAL BALLOT

PROPOSITION NO. ONE

[ ]	FOR	)	THE ISSUANCE OF \$2,500,000 PUBLIC
		)---	
[ ]	AGAINST	)	SAFETY BUILDING BONDS

PROPOSITION NO. TWO

[ ]	FOR	)	THE ISSUANCE OF \$1,400,000 DRAINAGE
		)---	
[ ]	AGAINST	)	IMPROVEMENT BONDS

PROPOSITION NO. THREE

[ ]	FOR	)	THE ISSUANCE OF \$300,000 CIVIC CENTER
		)---	
[ ]	AGAINST	)	IMPROVEMENT BONDS

PROPOSITION NO. FOUR

[ ]	FOR	)	THE ISSUANCE OF \$2,300,000 STREET
		)---	
[ ]	AGAINST	)	IMPROVEMENT BONDS

The City Secretary, Lyn Adolphus, is hereby appointed Early  
Voting Clerk, and the

City Hall  
2110 Fourth Street  
Rosenberg, TX 77471

is hereby designated as the place for early voting for said election. The clerk shall keep the place for early voting open for early voting from 8:00 a.m. to 5:00 p.m. on each day except Saturdays, Sundays, and official State holidays, during the period for early voting by personal appearance, which shall begin on July 26, 1993, and end on August 10, 1993.

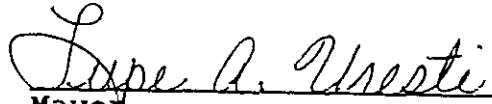
Section 4. Notice of such election shall be given by posting a substantial copy of this election ordinance, in English and Spanish, at the City Hall and at three other public places in the City, not less than 14 days nor more than 30 days prior to the date set for the election; and a substantial copy of this election ordinance, in English and Spanish, also shall be published on the same day in each of two successive weeks in a newspaper of general circulation published in the City, the date of the first publication to be not more than 30 days and not less than 14 days prior to the date set for the election.

Section 5. In all matters relating to the ordering, giving notice, and holding the election, the City shall comply with the applicable parts of the Texas Election Code, including particularly Chapter 272 of the Texas Election Code pertaining to bilingual requirements, and the Federal Voting Rights Act of 1965, as amended.


Section 6. It is hereby officially found and determined that notice of the meeting at which this ordinance is adopted was given as required by the Open Meetings Act, Article 6252-17, Vernon's Texas Civil Statutes, and that such meeting has been open to the public at all times when this ordinance was discussed and acted on.

Section 7. The requirement in Section 3.10 of the City's home-rule charter that ordinances be read on two separate days is hereby dispensed with by an affirmative vote of five or more of the Council members, and this ordinance shall take effect upon its adoption.

PASSED AND APPROVED the 15th day of June, 1993.


  
\_\_\_\_\_  
Mayor  
CITY OF ROSENBERG, TEXAS

ATTEST:

  
\_\_\_\_\_  
City Secretary  
CITY OF ROSENBERG, TEXAS

(SEAL)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney  
CITY OF ROSENGERG, TEXAS